

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3
4 WILLIAM J. WAGNER,
5 Plaintiff,

6 vs Docket No. 15-CV-633-JTC

7
8 CHIARI & ILECKI, LLP,
9 Defendant.

10
11 Examination Before Trial of MELISSA OVERBECK, ESQ.,
12 held pursuant to the Federal Rules of Civil Procedure,
13 in the law offices of CONNORS LLP, 1000 Liberty
14 Building, 424 Main Street, Buffalo, New York, on
15 Wednesday, October 5, 2016 at 1:13 p.m. before Molly
16 Fenske, Notary Public.

1 APPEARANCES:

2
3 LAW OFFICES OF KENNETH HILLER, PLLC
4 BY: SETH J. ANDREWS, ESQ.
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8 Appearing for the Plaintiff.

9
10 CONNORS LLP
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16 Appearing for the Defendant.

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18 PRESENT:

19 William Ilecki, Esq.
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1 (Whereupon, the following stipulations
2 were entered into by the respective parties:

3 It is hereby stipulated by and between
4 counsel for the respective parties that the oath of
5 the referee is waived, that filing and certification
6 of the transcript are waived, and all objections,
7 except as to the form of the question, are reserved
8 until the time of trial.)

9 THE REPORTER: Mr. Andrews, you'll supply
10 Mr. Woodard?

11 MR. ANDREWS: Of course.

12 THE REPORTER: Usual stipulations or read
13 and sign?

14 MR. WOODARD: Usual stipulations is what
15 we did for the first one; right? Yeah, sixty days, if
16 that's agreeable.

17 MR. ILECKI: Yeah.

18 MELISSA OVERBECK, ESQ., 610 Youngs Road,
19 Unit E, Amherst, New York 14221, having been duly
20 called and sworn, was examined and testified as
21 follows:

22 MR. ANDREWS: Melissa, hi. My name is
23 Seth Andrews. I'm the attorney for the plaintiff in
24 this matter, William J. Wagner. He's filed an action
25 naming Chiari & Ilecki as the defendant in a lawsuit

1 review that goes into locating someone.

2 Q. Let's look at -- is that A? I think so, yeah.
3 I'm showing you a document that's been previously
4 marked as Plaintiff's Exhibit A.

5 A. Sure.

6 Q. It's labeled Chiari 164, 165, 166. Have you
7 ever seen this document before?

8 A. Yes.

9 Q. What is this document to your knowledge?

10 A. This is an event log from our file regarding
11 William J. Wagner.

12 Q. And if we turn to 165 and we see date, February
13 9, 2015 in the event date column? It's got LX, DMV --
14 I'm sorry, it's got credit report, and then far left
15 column, event user, Missy. Are you Missy?

16 A. Yes.

17 Q. So on that date, you ordered a credit report
18 for William J. Wagner, Junior; is that correct?

19 A. Yes.

20 Q. And you also did an employment search for
21 William J. Wagner, Junior?

22 A. For our judgment debtor, yes.

23 Q. And the address 1571 Eggert Road, that was
24 found to be an invalid address based on your search?

25 A. Yes.

1 Q. And if we look down it says invalid address,
2 review, dash, credit report, and then the event
3 comment section, Real, dash, Info, DBTR, debtor, owns
4 5419 Roberts RD, period, W, slash, wife, semi-colon,
5 LX, dash, nothing current. What lead you to that
6 determination that William J. Wagner, Junior owns 5419
7 Roberts Road?

8 MR. WOODARD: Form.

9 THE WITNESS: Well, when I -- like I said
10 before, when I review a file, I look at the search
11 that comes up on the legal database and I compare it
12 to other sites such as Real Info.

13 In this case, I saw that William J.
14 Wagner, Junior had an address listed of 5419 Roberts
15 Road. So to verify that, I looked on the Real Info
16 website and confirmed that William J. Wagner, Junior
17 did own 5419 Roberts Road with his wife, the wife
18 being listed as a spouse on the Lexis report.

19 MR. ANDREWS: I'm going to show you a
20 document that's listed, or sorry, labeled as
21 Plaintiff's Exhibit C. Paul, do you have a copy still
22 of it?

23 MR. WOODARD: Mhmm.

24 BY MR. ANDREWS:

25 Q. It's identified as Chiari 192. Is that -- is

1 this similar to the type of report you would have ran
2 on I think you testified Real it's called or Real
3 Info?

4 A. Yes.

5 Q. Okay. When you run those reports, do you print
6 out the reports?

7 A. No.

8 Q. So you wouldn't through the normal course of
9 your employment print out reports for Real or for any
10 of the other search tools, like Lexis or Westlaw?

11 A. Print out in paper form?

12 Q. Yeah.

13 A. Sometimes I will print it and convert it to a
14 PDF and attach it to a file, not all the time.

15 Q. Do you know if you did that in this particular
16 case?

17 A. I did not.

18 Q. Any reason why not?

19 A. Because I marked it on the event log.

20 Q. And obviously, we don't have a copy of -- this
21 was taken in May 9th of 2016. We don't have a copy of
22 the record report that you pulled that day, but to the
23 best of your recollection, you believe it had William
24 Wagner, Junior listed as the owner of 5419 Roberts
25 Road?

1 A. I can only go by what the event log says, and
2 it says on February 9, 2015 I confirmed with Real Info
3 that 5419 Roberts Road was owned by a William Wagner.

4 Q. If you look at Plaintiff's Exhibit C, under
5 ownership information it says Wagner, William;
6 correct?

7 A. Yes.

8 Q. There's no junior on there; correct?

9 A. Right.

10 Q. So what I'm asking is if you can recall that
11 junior was on there when you pulled it, if that was
12 your recollection?

13 MR. WOODARD: The word junior?

14 MR. ANDREWS: Yeah, yeah.

15 THE WITNESS: I don't recall.

16 BY MR. ANDREWS:

17 Q. Okay. Keeping on that Chiari 165, on 2/9/15
18 then looking at the event comment, there's a letter to
19 debtor on that date, as well as an information
20 subpoena to debtor on that date. Do you see that?

21 A. On 165?

22 Q. Yes.

23 A. Yes, yes, I see it.

24 Q. Okay. Ignoring the handwriting on there, is
25 that the letter that you recall signing?

1 MR. WOODARD: Are we going to mark this
2 one?

3 MR. ANDREWS: Yeah.

4 MR. WOODARD: We're going to mark it?

5 MR. ANDREWS: Yeah.

6 MR. WOODARD: Just so the record is clear,
7 it's a February 9, 2015 letter with handwriting on it.

8 MR. ANDREWS: Yeah.

9 THE WITNESS: I'm sorry, are you asking me
10 if this is the letter that was sent?

11 BY MR. ANDREWS:

12 Q. Is that your signature?

13 A. Yes.

14 Q. Did you draft this letter?

15 A. Yes.

16 MR. ILECKI: Can I recommend that we mark
17 that? And I'll tell you why, because I think that is
18 a letter that may have been referenced in the morning
19 by you.

20 MR. ANDREWS: We're going to mark it.

21 MR. ILECKI: And that's distinct from the
22 other letter because there's markings on it.

23 MR. WOODARD: Correct.

24 MR. ANDREWS: Yeah.

25 (Whereupon, Exhibit Plaintiff's E, a

1 February 9, 2015 letter, was marked for
2 identification.)

3 MR. WOODARD: So the letter that we've
4 just been discussing has just been marked as
5 Plaintiff's Exhibit E.

6 MR. ANDREWS: Yeah.

7 BY MR. ANDREWS:

8 Q. Just to backtrack real quick, if we go up to
9 that other event comment where it says LX, dash,
10 nothing current, does that mean you did a Lexis search
11 and it provided no current information?

12 A. Yes.

13 Q. So Mr. Wagner based on, again, 165 calls in and
14 states that he's not the debtor. He's not junior,
15 provides last couple numbers of his social security
16 number, and the individual he speaks with knows that
17 they e-mailed MO. That's you; correct?

18 A. Yes.

19 Q. Showing you a document that's marked already as
20 Plaintiff's Exhibit B, do you recall reviewing this
21 document prior to today?

22 A. Yes.

23 Q. When did you review it?

24 A. I couldn't tell you specifically.

25 Q. Okay. When you got that from Karen, what was

1 your course of action, if any?

2 A. Well, usually when that happens, the assistant
3 would have asked the person who called to submit proof
4 that they are not in fact the debtor. So at that
5 point, I would -- I waited to see if the defendant or
6 if the person who called actually submitted proof.

7 Q. So this didn't trigger any additional
8 investigation on your part?

9 MR. WOODARD: Form.

10 THE WITNESS: I had just investigated it
11 three days before.

12 MR. ANDREWS: So you didn't investigate it
13 any further after receiving this?

14 MR. WOODARD: Object to form.

15 MR. ANDREWS: Did you investigate it any
16 further after receiving this?

17 MR. WOODARD: Form.

18 THE WITNESS: Well, yeah, I mean, there's
19 more. When -- when are you asking me, when did I
20 review this?

21 MR. ANDREWS: Yeah. After you got this,
22 did -- what steps, if any, did you take to investigate
23 that that individual calling in was in fact the
24 debtor?

25 MR. WOODARD: Form.

1 THE WITNESS: Well, I looked again on June
2 5th. I did another review to make sure that it was
3 him before anything else went out to that person.

4 BY MR. ANDREWS:

5 Q. What search tool did you use?

6 A. I used a Lexis search.

7 Q. And you didn't print out a copy of that Lexis
8 search; correct?

9 A. No.

10 MR. ILECKI: Correct, are you saying
11 that --

12 THE WITNESS: No, I did not print it out.

13 MR. ILECKI: Okay.

14 (Whereupon, Exhibit Plaintiff's F, a
15 subpoena duces tecum with restraining notice, was
16 marked for identification.)

17 BY MR. ANDREWS:

18 Q. You've been handed a document labeled
19 Plaintiff's Exhibit F. Are you familiar with this
20 document?

21 A. Yes.

22 Q. What is it?

23 A. A subpoena duces tecum with restraining notice.

24 Q. If we turn to the second page, it's got a
25 signature on there. Is that your signature?

1 A. Yes.

2 Q. Did you -- I recognize this is a form document,
3 but did you prepare the document?

4 A. I did not actually merge the document, no.

5 Q. You just signed-off on it?

6 MR. WOODARD: Form.

7 THE WITNESS: Well, yes, but I review it
8 first.

9 BY MR. ANDREWS:

10 Q. Okay. To the best of your knowledge, that
11 address, that was the intended address for service of
12 this subpoena, is that right, 5419 Roberts Road,
13 Hamburg, New York 14075?

14 A. Is the intended address did you say?

15 Q. Yes.

16 A. Yes.

17 Q. Okay. Are you aware of any procedures in place
18 at your office when a debtor or someone calling in
19 disputes that they are the debtor?

20 A. Yes, I am aware of the procedure.

21 Q. What's that procedure?

22 A. An attorney is notified and it's up to the
23 attorney to do a review of the file. Also, when the
24 person calls in claiming they're not the judgment
25 debtor, our assistants are to ask them to send in

1 proof verifying that they are not in fact the judgment
2 debtor.

3 Q. And is this procedure, are you aware of
4 anything in writing to that effect that you just
5 described?

6 A. No.

7 Q. You testified that the employee or person
8 taking the call is to request verifying information.
9 How are they made aware of that procedure, do you
10 know?

11 A. How are the assistants made aware to ask?

12 Q. Yeah.

13 A. In their training. When they're hired, they're
14 trained.

15 Q. Is there anything written to that effect?

16 A. No.

17 Q. When you made the determination that that was
18 -- that the 5419 Roberts Road was a good address for
19 the debtor, did you discuss that with any other
20 attorneys in the office?

21 A. No.

22 Q. Looking at 165, which I think it's again
23 Plaintiff's A?

24 MR. WOODARD: I believe so, yeah.

25 BY MR. ANDREWS:

1 Q. If we look on 6/5/2015, review credit report,
2 LX, DMV, and then the comment section says LX, dash,
3 looks like WW, comma, SR, period, and WW, comma, JR,
4 period, live at same address. Do you see that?

5 A. Yes.

6 Q. What search tool provided you with that
7 information?

8 A. Lexis.

9 Q. You don't -- there's no print-out of the actual
10 report --

11 A. No.

12 Q. -- that you're aware of?

13 Did you consider at all prior to sending out
14 that subpoena duces tecum that Mr. Wagner had called
15 in twice saying that he wasn't the debtor?

16 A. I considered that he called in twice and was
17 told to send in proof verifying who he was and he
18 still hadn't done that.

19 Q. Did he provide his -- at least a little bit of
20 a social security number?

21 MR. WOODARD: Form.

22 THE WITNESS: It looks like he provided
23 the last two of his social security number.

24 MR. ANDREWS: Did he provide his date of
25 birth or his birth month and birth year?

1 MR. WOODARD: Form.

2 THE WITNESS: You would have to ask Karen.
3 She's the one who took that event.

4 BY MR. ANDREWS:

5 Q. But that information was made available to you
6 prior to deciding to serve him with the --

7 A. Yes.

8 Q. -- subpoena? Yes.

9 Let's look at 166. So if we look at June 29,
10 2015 comment section says original file, opened docs.
11 What's that?

12 A. When we open a file, we scan everything into
13 the system that the client refers to us, so it looks
14 like I just scanned those in.

15 Q. What would those docs have been?

16 A. I don't remember specifically what they were
17 here.

18 Q. Like, docs in terms -- I mean, docs as far as
19 the judgment or information about the debtor?

20 A. Whatever the client sends to us.

21 Q. Okay, so this case originated sometime prior to
22 '06. Why were you scanning documents in in 2015,
23 original file, opened docs?

24 A. My thought is to make sure that everything was
25 scanned in. I mean, scanning wasn't made available

1 until -- it could have been 2006. I don't remember
2 specifically, but there was a time when our system
3 operated without scanning being available.

4 Q. So this is just housekeeping you got to in
5 other words? There was nothing significant. No one
6 told you to do this. It wasn't part of your
7 procedure. It was just general housekeeping; is that
8 fair to say?

9 A. No one told me to do it.

10 Q. If we look down below, it says review credit
11 report, LX, DMV, and then the comment section, it says
12 confirm there is a William Wagner, W, slash, SS,
13 pound, ending in 3918, comma, DOB 10/23/50, living at
14 Roberts RD, period, not our DBTR. So at that point,
15 you confirmed that the debtor did not reside at 5419
16 Roberts Road?

17 MR. WOODARD: Object to form.

18 THE WITNESS: No, I did not confirm that
19 at that time. I didn't know if the debtor resided
20 there. He never sent us proof.

21 BY MR. ANDREWS:

22 Q. So is it your understanding at that point
23 there's a William Wagner with social security 3918,
24 date of birth 10/23/50, living at Roberts Road; is
25 that right?

1 A. That's what it looks like, yes.

2 Q. Is (sic) the debtor's social security number
3 end in 3918?

4 MR. WOODARD: Form.

5 BY MR. ANDREWS:

6 Q. Do you know if the debtor's social security
7 number ends in 3918?

8 A. I don't know.

9 Q. Would that have been -- would that information
10 have been available to you in the original file of
11 open docs you scanned in?

12 A. What information?

13 Q. His social security number.

14 A. Yes, I don't have it in front of me here. I
15 don't know what it is offhand.

16 Q. Yeah. So when you say not our debtor, doesn't
17 that indicate that you don't believe that William
18 Wagner living at 1020, or I'm sorry, at 5419 Roberts
19 Road is the debtor?

20 MR. WOODARD: Form.

21 THE WITNESS: No, all that tells me is
22 that there was a William Wagner living at the Roberts
23 Road address with that date of birth and social
24 security number. I had no idea if our debtor was
25 residing there as well. I don't know.